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and INTERNATIONAL IP HOLDINGS, LLC

13
14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**

16 INNOVATION VENTURES, LLC, LIVING ESSENTIALS,
17 LLC, and INTERNATIONAL IP HOLDINGS, LLC,

18 Plaintiffs,

19 v.

20 PITTSBURG WHOLESALE GROCERS, INC., d/b/a
21 PITCO FOODS, et al.,

22 Defendants,

23 AND RELATED CROSS-CLAIMS.

Case No. C-12-5523-WHA

**~~PROPOSED~~ CONSENT
JUDGMENT AND
PERMANENT
INJUNCTION**

24 On consent of Plaintiffs Innovation Ventures, LLC, Living Essentials, LLC, and International IP
25 Holdings, LLC (together, “Living Essentials”) and Defendants Santa Monica Distributing, Inc.,
26 Manouchehr Heikali, and Aziz Heikali (together, the “Santa Monica Defendants”), it is hereby
27 ORDERED, ADJUDGED and DECREED:
28


**~~PROPOSED~~ CONSENT JUDGMENT AND
PERMANENT INJUNCTION**


CASE NO. C-12-5523-WHA


1. For purposes of this injunction, the “5-Hour ENERGY® Marks” are:

- “5 HOUR ENERGY” (Registration No. 3,003,077);
- “5-HOUR ENERGY” (Registration No. 4,004,225);

-  (Registration No. 4,104,670);

-  which includes the wording “5-hour ENERGY” in black outlined in yellow, below which are the words “EXTRA STRENGTH” in yellow, along with a person in black silhouette, outlined in yellow, shown in an athletic pose adjacent to an uneven landscape, with the sky depicted in transitioning colors from black to red as the sky meets the landscape (Registration No. 4,116,951);

- , commonly referred to as “Running Man,” (Registration No. 3,698,044);
- and

-  which includes the wording “5-hour ENERGY” in black outlined in yellow, along with a person in black silhouette, outlined in yellow, shown in an athletic pose adjacent to an uneven landscape, with the sky depicted in transitioning colors from red to yellow as the sky meets the landscape (Registration No. 4,120,360).

2. The Santa Monica Defendants, their agents, servants, employees, affiliates, or any other person in active concert and participation with them, is permanently enjoined from:

- a. using any of the 5-Hour ENERGY® Marks, as defined in Paragraph 45 of the Second Amended Complaint (or any marks confusingly similar thereto)

1 on any counterfeit product in connection with the manufacture, sale, offer
2 for sale, distribution, advertisement, or any other use of dietary
3 supplements;

- 4 b. using any logo, trade name, or trademark confusingly similar to any of the
5 5-Hour ENERGY® Marks which may be calculated to falsely represent or
6 which has the effect of falsely representing that the services or products of
7 the Santa Monica Defendants or of others are sponsored by, authorized by,
8 or in any way associated with Living Essentials;
9
10 c. infringing any of the 5-Hour ENERGY® Marks;
11
12 d. falsely representing themselves as being connected with Living Essentials
13 or sponsored by or associated with Living Essentials, or engaging in any
14 act which is likely to cause the trade, retailers, or members of the
15 purchasing public to believe that they or the other defendants are associated
16 with Living Essentials, provided, however, that the purchase and sale of 5-
17 hour ENERGY® products shall not in and of itself fall within this sub-
18 paragraph;
19
20 e. using any reproduction, counterfeit, copy, or colorable imitation of any of
21 the 5-hour ENERGY® Marks in connection with the publicity, promotion,
22 sale, or advertising of dietary supplements;
23
24 f. affixing, applying, annexing, or using in connection with the sale of any
25 goods, a false description or representation, including words or other
26 symbols tending to falsely describe or represent those goods as being 5-
27 hour ENERGY® and from offering such goods in commerce;
28

- 1 g. buying, selling, transferring (other than to Living Essentials or law
2 enforcement officials), altering, or destroying any counterfeit products with
3 the 5-hour ENERGY® Marks; and
4 h. assisting, aiding, or abetting any other person or entity in engaging in or
5 performing any of the activities referred to in subparagraphs (a) through (g)
6 above.

7
8 3. Nothing contained in this Consent Judgment and Permanent Injunction is or shall
9 be construed as an admission, express or implied, of any improper or illegal conduct, or of any
10 culpability or liability by the Santa Monica Defendants.

11 4. Any claims that the Santa Monica Defendants may have against any other
12 individual or entity arising out of their purchase, distribution, advertising, offering for sale, and
13 sale in commerce of the products containing the 5-Hour ENERGY® Marks are hereby assigned
14 to Living Essentials.

15 5. In addition to other remedies, including damages, for contempt of this Permanent
16 Injunction, in the event of breach or violation of the terms of this Permanent Injunction by the
17 Santa Monica Defendants, their agents, servants, employees, affiliates, subsidiaries or any other
18 person in active concert and participation with them, Living Essentials is entitled to a preliminary
19 and permanent injunction against the breaching conduct solely upon a showing of a likelihood of
20 success of establishing that such a breach occurred. Living Essentials and the Santa Monica
21 Defendants each agree that jurisdiction and venue for such an action exist in this District Court
22 and the Santa Monica Defendants waive any and all defenses based on personal jurisdiction and
23 venue.
24

25
26 6. This Consent Judgment is entered pursuant to Rule 58 of the Federal Rules of
27 Civil Procedure, and this action is hereby dismissed with prejudice only against the Santa Monica
28 Defendants only, without costs or attorneys' fees, ~~save that this District Court shall retain~~

jurisdiction over this action, including, over implementation of, or disputes arising out of, this
 Consent Judgment or the settlement of this action with regard to the Santa Monica Defendants. A
 prevailing party, in addition to any award of damages or injunctive relief, shall be entitled to an
 award of actual attorneys' fees in any such dispute.

Dated: March 22, 2013

INNOVATION VENTURES, LLC,
 LIVING ESSENTIALS, LLC, and
 INTERNATIONAL IP HOLDINGS, LLC

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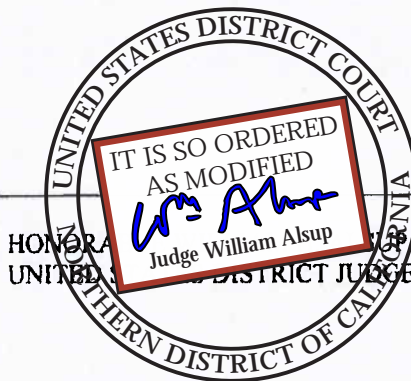
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 Distributing, Inc., Manouchehr Heikali
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The Court shall retain jurisdiction over this consent judgment and
 permanent injunction for three years.

IT IS SO ORDERED.

Date: March 26, 2013.



PROPOSED CONSENT JUDGMENT AND
 PERMANENT INJUNCTION

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